

JUDICIAL COUNCIL OF THE THIRD CIRCUIT

J.C. No. 03-13-90005

IN RE: COMPLAINT OF JUDICIAL MISCONDUCT
OR DISABILITY

ORIGINAL PROCEEDINGS UNDER 28 U.S.C. § 351

MEMORANDUM OPINION

(Filed: August 13, 2013)

PRESENT: McKEE, Chief Judge.

This is a complaint filed under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-64, against a United States Bankruptcy Judge (hereinafter “Subject Judge”). In support of her complaint, Complainant filed hundreds of pages of documents and numerous supplemental submissions. All of these documents have been reviewed and, for the reasons discussed below, the complaint will be dismissed.

The Judicial Conduct and Disability Act provides a remedy if a federal judge “has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts.” 28 U.S.C. § 351(a). A chief judge may dismiss a complaint if, after review, he or she finds it is not cognizable under the statute, is directly related to the merits of a decision or procedural ruling, or is frivolous or lacks sufficient evidence to raise an inference of misconduct. 28 U.S.C. §§ 352(b)(1)(A)(i)-(iii). The “misconduct

procedure [under the Act] is not designed as a substitute for, or supplement to, appeals or motions for reconsideration. Nor is it designed to provide an avenue for collateral attacks or other challenges to judges' rulings." In re Memorandum of Decision of Judicial Conference Committee on Judicial Conduct and Disability, 517 F.3d 558, 561 (U.S. Jud. Conf. 2008).

As a preliminary matter, Complainant makes allegations concerning individuals and entities who are not subject to the Judicial Conduct and Disability Act; e.g., attorneys, a bank, the United States Attorney's Office, realtors, the Federal Bureau of Investigation, and state authorities. See 28 U.S.C. §§ 351, 352(b)(1)(A)(i); Rule 4, Rules for Judicial-Conduct and Judicial-Disability Proceedings. Accordingly, these allegations will not be addressed in this opinion.¹

In essence, Complainant's lengthy complaint alleges that her property was improperly sold without her permission and the Subject Judge, who presided over her bankruptcy proceedings, allowed this to occur. Complainant contends that she presented the Subject Judge with evidence of fraud and misconduct, but the Subject Judge "willfully Neglected to investigate a fraud against [Complainant] by a Bank's president . . . As a result of her bias discrimination, negligence of her Judicial duty, abuse of her immunity she made me suffer, Due to her willful negligence the Criminals attacked me and attempted to kill me, I was imminently tortured and tortured by criminals, The criminals

¹ Complainant also sought to file a complaint against a retired District Judge. Complainant was previously informed that her complaint was not accepted for filing with respect to that judge. Rules 4, 6, Rules for Judicial-Conduct and Judicial-Disability Proceedings.

stole all my properties with her help.” Complainant further alleges that the Subject Judge hid the fraud and exhibited bias and discrimination on the basis of her race and religion because “[w]ith knowledge she dismissed all my adversary proceedings” against the bank. In addition, Complainant alleges that the Subject Judge stole money from her and caused Complainant to lose all her properties. Complainant maintains that the Subject Judge had a duty to bring certain attorneys to the court “for investigations” of checks and to refer the crime to the appropriate state authorities. Complainant also claims that the Subject Judge refused to provide her with copies of orders and transcripts which were hidden in archives and never served upon her.

As noted above, Complainant submitted hundreds of pages of exhibits in support of her complaint. These documents, which consist primarily of copies of state and federal court pleadings and orders, have all been reviewed and provide no evidence of any judicial misconduct, let alone criminal behavior of any kind, on the part of the Subject Judge. Indeed, Complainant filed a civil suit naming many of the entities and attorneys who allegedly engaged in the fraud that was covered up by the Subject Judge. The District Court dismissed her civil action and imposed an injunction order limiting Complainant’s ability to file additional actions without permission from the court. Complainant appealed and the United States Court of Appeals for the Third Circuit affirmed the District Court’s order.

Furthermore, the relevant Bankruptcy Court docket has been reviewed and it does not support Complainant’s allegation that the Subject Judge refused to provide her with

copies of orders and transcripts. Indeed, the docket reflects that a letter concerning a transcript was filed a year after the Subject Judge denied Complainant's motion to reopen. The Subject Judge, however, had previously advised the parties that "the Court can take no action on the basis of a letter. A motion must be filed in accordance with the Local Rules of Bankruptcy Procedure for any specific relief requested." No motion concerning a transcript was subsequently filed. In addition, it is the responsibility of the clerk's office, and not federal judges, to send copies of orders and provide copies of transcripts of public proceedings upon payment of the appropriate fee. The archiving of such orders and transcripts is not evidence of misconduct. Accordingly, Complainant's allegations are dismissed as frivolous and unsupported by any evidence that would raise an inference that misconduct has occurred. 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(C), (D), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

The primary basis for Complainant's claims of misconduct appears to be her disagreement with the Subject Judge's orders and decisions in the course of her bankruptcy proceedings. For instance, Complainant alleges that Subject Judge engaged in misconduct when she refused to reopen her bankruptcy case, denied Complainant access to an attorney's file, and failed to discharge a trustee that Complainant filed an attorney misconduct claim against. Complainant also alleges that the Subject Judge "happily accepted" every "abuse" drafted against Complainant by opposing counsel and did not require physical proof. These allegations are plainly merits-related and are not cognizable under the Judicial Conduct and Disability Act. See 28 U.S.C. § 352(b)(1)(A)(ii) (chief

judge may dismiss a complaint if he or she finds that it is directly related to the merits of a decision or procedural ruling); Rule 3(h)(3)(A), Rules for Judicial-Conduct and Judicial-Disability Proceedings (“[a]n allegation that calls into question the correctness of a judge’s ruling, including a failure to recuse, without more, is merits-related”); Rule 11(c)(1)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings (a complaint must be dismissed in whole or in part to the extent that the chief judge concludes that the complaint is directly related to the merits of a decision or procedural ruling).

For the foregoing reasons, the complaint is dismissed pursuant to 28 U.S.C. § 352(b)(1)(A)(i), (ii), and (iii).

/s/ Theodore A. McKee
Chief Judge

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ORDER

(Filed: August 13, 2013)

PRESENT: McKEE, Chief Judge.

On the basis of the foregoing opinion entered on this date, it is ORDERED AND ADJUDGED that the written complaint brought pursuant to 28 U.S.C. § 351 is hereby dismissed under 28 U.S.C. § 352(b)(1)(A)(i), (ii), and (iii).

This order constitutes a final order under 28 U.S.C. § 352(c). Complainant is notified in accordance with Rules 11(g)(3) and 18, Rules for Judicial-Conduct and Judicial-Disability Proceedings, of the right to appeal this decision by the following procedure:

Rule 18(a) Petition. A complainant or subject judge may petition the Judicial Council of the Third Circuit for review.

Rule 18(b) Time. A petition for review must be filed in the office of the Circuit Executive of the Court of Appeals within **35 days** of the date on the letter informing the parties of the Chief Judge's order.

18(b) Form. The petition should be in letter form, addressed to the Circuit Executive of the Court of Appeals, and in an envelope marked “Misconduct Petition” or “Disability Petition.” The name of the subject judge must not be shown on the envelope. The letter should be typewritten or otherwise legible. It should begin with “I hereby petition the judicial council for review of . . .” and state the reasons why the petition should be granted. It must be signed. There is no need to enclose a copy of the original complaint.

The full text of the Rules for Judicial-Conduct and Judicial-Disability Proceedings is available from the Office of the Circuit Executive of the Court of Appeals for the Third Circuit and on the Court of Appeals’ internet site, www.ca3.uscourts.gov.

/s/ Theodore A. McKee
Chief Judge

Dated: August 13, 2013